

COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

STATE OF OHIO

PLAINTIFF,

vs.

FREDRICK HALL

DEFENDANT.

Case Number: B-980752

*Volume 4 of 4*

TRANSCRIPT OF TRIAL TESTIMONY

APPEARANCES:

WILLIAM ANDERSON, ESQ.

On behalf of the Plaintiff.

ELIZABETH ZUCKER, ESQ.

and

JAMES RADER, ESQ.

On behalf of the Defendant.

BE IT REMEMBERED that upon the hearing of  
this cause, in the Court of Common Pleas, before the  
Honorable STEVEN E. MARTIN, one of the judges of the said  
Court of Common Pleas, on the date hereinafter stated, the  
following proceedings were had.

1. MORNING SESSION, MAY 4, 1999

2 THE COURT: Okay. Mr. Rader, it's my  
3 understanding that you're not going to put on any  
4 additional evidence, but there is a stipulation  
5 that you want to enter into. Let's do it now.

6 MR. RADER: Your Honor, I believe that  
7 relates to Defendant's Exhibits 15 and 16. Number  
8 15 is a request submitted by Officer Huffman for  
9 fingerprint analysis of the three, .380 shell  
10 casings in this case, and the attempt to develop  
11 latent fingerprints resulted in a negative result.

12 Defendant's Exhibit 16 is -- there was a  
13 latent print of good quality retrieved from the  
14 automobile, which was compared with the  
15 fingerprint of Fredrick Hall. That request for  
16 analysis was also submitted by Officer Huffman.

17 THE COURT: That's Defendant's Exhibits  
18 15 and 16.

19 MR. ANDERSON: Judge, the State will  
20 stipulate to those two exhibits.

21 THE COURT: Do you have any other  
22 evidence that you want to submit?

23 MR. RADER: Your Honor, also, there was a  
24 stipulation as to Defendant's Exhibit 13, which is  
25 the medical records from Correctional Medical

1 Services, Inc., which is the facility Justice  
2 Center, I believe the prosecutor will stipulate to  
3 those.

4 MR. ANDERSON: So stipulated.

5 THE COURT: And Defendant's Exhibit  
6 number 14 is medical records from University  
7 Hospital, beginning with treatment on the 3rd of  
8 October, 1998. I believe the prosecution will  
9 agree to stipulate those as well.

10 MR. ANDERSON: That's correct.

11 THE COURT: Okay. All right. Any other  
12 exhibits or evidence?

13 MR. RADER: Yes, we have some other  
14 exhibits, your Honor.

15 THE COURT: I know defense exhibits,  
16 we'll go in order of introduction: Defendant's  
17 Exhibit 5, it's a chart; do you want that  
18 admitted?

19 MR. RADER: Please excuse me. Can we  
20 back up to 4, which is marked as Defense Exhibit  
21 4, which is the tape that was authenticated the  
22 other day by the gentleman who came down from the  
23 police communications.

24 THE COURT: All right.

25 MR. RADER: That's numbered 4 because it

1 was numbered such in the motion to suppress  
2 hearing.

3 THE COURT: Okay.

4 Defendant's 4, the tape, do you have  
5 something to give them to play it on.

6 MR. RADER: Yes.

7 THE COURT: Okay. Any objection, Mr.  
8 Anderson?

9 MR. ANDERSON: No.

10 THE COURT: Defendant's 5, some chart  
11 that you did; do you want that introduced?

12 MR. RADER: Yes, your Honor.

13 THE COURT: Defendant's 6 -- another  
14 chart?

15 MR. RADER: Right. Any objection to 5 or  
16 6?

17 MR. ANDERSON: No.

18 MR. RADER: Number 7 and Number 8, your  
19 Honor, if it please the Court, are the blowups,  
20 the computer generated chronologies from police  
21 communications.

22 THE COURT: Any objection?

23 MR. ANDERSON: No.

24 THE COURT: Defendant's 9 is a subpoena?

25 MR. RADER: Yes.

1 MR. ANDERSON: Object to that.

2 MR. RADER: You do?

3 THE COURT: Sustained. Defendant's 9  
4 won't come in.

5 Defendant's 10, 11, and 12? Those were  
6 the blowups, weren't they?

7 MR. RADER: Your Honor, Number 10 was a  
8 transcript that Ms. Zucker used one page of to  
9 cross-examine Officer Baker.

10 MR. ANDERSON: Objection.

11 THE COURT: Sustained. That will be  
12 admitted.

13 THE COURT: What are 11 and 12?

14 MR. RADER: Those are, again,  
15 enlargements of computer-generated materials from  
16 police communications.

17 THE COURT: You object?

18 MR. ANDERSON: No.

19 THE COURT: They'll be both be admitted.

20 (Defendant's Exhibit 11 and 12 admitted.)

21 THE COURT: Defendant's 13, 14, 15, and  
22 16 are all stipulated in; is that correct?

23 MR. RADER: That's correct.

24 May I digress to Defendant's Exhibit  
25 Number 10?

1 THE COURT: Uh-huh.

2 MR. RADER: Mr. Bailey was asked if he  
3 made these statements, et cetera, which included  
4 that one page. He looked at the page here in  
5 court from the witness stand, authenticated that  
6 is, in fact, what he said. I would ask that one  
7 page be admitted.

8 THE COURT: You indicated before, and  
9 it's the way that he recalled it, it was for  
10 impeachment. If you impeach him, you have the  
11 testimony from which you can impeach him.

12 MR. ANDERSON: Not only that, he admitted  
13 that's what he said.

14 MR. RADER: Okay. With the prosecution's  
15 agreement that he admitted what he said in the  
16 transcript, we have no problem.

17 MR. ANDERSON: He said what he said.

18 THE COURT: He said whatever is in the  
19 record he said.

20 All right. You'll rest.

21 Bring the jury in. We'll do the  
22 stipulation as to Defendant's Exhibits 13, 14, 15  
23 and 16. You will rest on the record.

24 Mr. Anderson, I understand you have one  
25 rebuttal witness.

1 MR. ANDERSON: I do.

2 THE COURT: We will go directly from that  
3 rebuttal witness. Are you going to introduce any  
4 more exhibits?

5 MR. ANDERSON: No.

6 THE COURT: We will go directly from  
7 rebuttal into closing. How long do you need to  
8 close? I'm thinking of an hour each side; is that  
9 enough time?

10 MR. RADER: Yes.

11 THE COURT: In advance, Mr. Rader, are  
12 you or Ms. Zucker going to do the close or both or  
13 what?

14 MR. RADER: I believe, I will, your  
15 Honor.

16 THE COURT: Okay. Mr. Anderson, how much  
17 time do you want reserved for rebuttal?

18 MR. ANDERSON: It doesn't matter. If I  
19 run over 45 minutes in my opening portion, I have  
20 talked too long anyway.

21 THE COURT: If you hit 45 minutes in your  
22 opening portion, I will tell you, Mr. Anderson,  
23 you have 15 minutes left. You do what you want.

24 MR. ANDERSON: Thank you.

25 THE COURT: Okay. Then we will probably

1 take a break, maybe send them to lunch before we  
2 read the charge.

3 Krista is finishing up the charge. The  
4 charge, itself, is done. She's finishing up the  
5 verdict forms right now.

6 THE COURT: Okay. Are all exhibits on  
7 this table, the exhibits that have been admitted?

8 MR. RADER: Right.

9 THE COURT: Do you need that thing during  
10 your closing? If you do, pull it out now.

11 MR. RADER: I don't believe it's  
12 worthwhile, to answer your question.

13 THE COURT: You don't need it?

14 MR. RADER: No.

15 (The jury entered the courtroom at 10:37  
16 a.m.)

17 THE COURT: I apologize for the delay,  
18 ladies and gentlemen.

19 Does the defense have some stipulations  
20 that they want to state?

21 MR. RADER: Yes, your Honor, if it please  
22 the Court, the prosecution and I have agreed to  
23 stipulate the admission into evidence of some  
24 medical records from the Hamilton County Justice  
25 Center. That's Exhibit Number 13.



1           Exhibit Number 14 are the medical records  
2           from the University Hospital Medical Center.

3           Exhibit 15 is a report from the Police  
4           Department requesting fingerprint analysis of the  
5           three cartridge cases. That is the report  
6           submitted to the lab by Officer Huffman.

7           And Exhibit Number 16 was, again, a  
8           report submitted by Officer Huffman requesting the  
9           examination of a fingerprint found in the  
10          automobile. The prosecution and I have agreed to  
11          stipulate those documents into evidence without  
12          objection.

13          THE COURT: Objection. Thank you. So  
14          stipulated.

15          MR. ANDERSON: Yes, your Honor.

16          THE COURT: Any further witnesses you  
17          want to present for the defense?

18          MR. RADER: No, your Honor, defense  
19          rests.

20          THE COURT: Any rebuttal from the  
21          State of Ohio?

22          MR. ANDERSON: I have one additional  
23          rebuttal witness, your Honor.

24          THE COURT: Okay.

25          MR. ANDERSON: The State will call

1           Officer Huffman back to the stand, please.

2                       THE COURT: Officer, come up. You have  
3           been previously sworn. You're still under oath in  
4           this case.

5                       THE WITNESS: Yes.

6                       THE COURT: Sit down and pull the  
7           microphone over to you.

8                       THE COURT: Okay. Mr. Anderson.

9                       MR. ANDERSON: Thank you, your Honor.

10                      DAN HUFFMAN

11           being previously duly sworn, was examined and testified as  
12           follows:

13                      DIRECT EXAMINATION

14           BY MR. ANDERSON:

15                      Q.           Officer Huffman, you testified in this  
16           matter last week, I believe?

17                      A.           Yes, sir.

18                      Q.           Okay. You're still under oath. What I  
19           will do is I will hand you what's been marked for  
20           identification Defendant's Exhibit 15. Can you identify  
21           what that exhibit is, sir?

22                      A.           Yes, sir. It's a photo card evidence  
23           submission sheet. Any time we submit evidence to  
24           coroner's lab or our lab, we fill one of those out.

25                      Q.           You previously identified as Defendant's

1 Exhibit 3, three shell casings. Did you do anything with  
2 the shell casings once they were recovered?

3 A. Yes, sir. I only recovered one of the  
4 spent shell casings, which was in Mr. Hall's car.

5 Q. Okay.

6 A. I placed that in a evidence submission  
7 envelope, and the other two was already placed in the  
8 other two by other officers. And we sent them to the  
9 fingerprint criminalist, and I asked to see if there were  
10 fingerprints on those shell casings.

11 Q. According to Defendant's Exhibit 15,  
12 Officer Ron Camden, who does the fingerprint analysis, was  
13 unable to lift any latent prints from the shell casings?

14 A. Yes, sir.

15 Q. You indicated the shell casings were  
16 placed in different envelopes, the one that was recovered  
17 from the car and two that were recovered from the scene?

18 A. Yes.

19 Q. Look at State's Exhibit 10. Today those  
20 shell casings are, in fact, contained in the same  
21 envelope?

22 A. Yes, sir. After a day or so, after the  
23 results of the fingerprint tests, I requested that the  
24 criminalist send them to the coroner's lab for a striation  
25 test, which is a test to determine -- if all three casings

1 were fired from the same gun, they leave marks and  
2 striations in the shell casings.

3 Q. And you have also got a report from the  
4 coroner's office indicating that two of the shell casings  
5 were fired from the same gun, and one was not fired from  
6 the same gun; is that correct?

7 A. That's correct, yes, sir.

8 Q. Can you tell which particular shell  
9 casings were recovered from the car and the ones that were  
10 recovered from the scene?

11 A. Not now, no.

12 Q. Why is that?

13 A. Evidently, the criminalist or the lab  
14 technician, whoever, after the striation test or before  
15 the striation test, they were placed together.

16 Q. Inadvertently?

17 A. Yes, sir.

18 Q. Okay. Now, I will also hand you what's  
19 marked as Defendant's Exhibit 16. Can you identify what  
20 that particular exhibit is?

21 A. Yes, sir. At the time that I was called  
22 in, at the time I processed the car, I had no idea if  
23 there was going to be more victims or whatever, so I took  
24 fingerprints from the automobile.

25 Q. How many viable latent fingerprints did

1 you obtain from the automobile?

2 A. I obtained one quality print, which means  
3 it could be identified, but it came back without being  
4 Fred Hall's, who I submitted.

5 Q. Did you submit anybody else?

6 A. No.

7 Q. How about Mr. Davis?

8 A. I believe he was an one of the juveniles,  
9 or they were both juveniles at the time. I cannot recall.  
10 No, sir, I did not submit anybody else.

11 Q. So the fingerprint that was recovered  
12 from the car, it was not traced to the defendant. We  
13 don't know whose fingerprint that is; is that correct?

14 A. That's correct.

15 Q. Now, how long have you been on the police  
16 force?

17 A. I have been a member of the police  
18 division for 27 years.

19 Q. What can you tell about gunshot residue  
20 tests?

21 A. From what I understand, there's a  
22 two-hour period, a window between the time that supposedly  
23 someone has fired a weapon and the time that the test  
24 should be taken.

25 Q. Okay. Do you know why that is?

1           A.           Apparently they can rub it off on their  
2 shirt. If there is -- if they have gone from the scene  
3 and out of sight and hiding or whatever, they can rub it  
4 in the grass area and get it off, or apparently it loses  
5 it's effectiveness in two hours. I have never been in  
6 that division.

7           Q.           Okay. According to your understanding,  
8 there's a two-hour window within which a gunshot residue  
9 test can be performed?

10          A.           Yes.

11          Q.           Was there a gunshot residue test  
12 performed in this case on the defendant?

13          A.           No, sir, to my knowledge, there was not.

14          Q.           Did you perform one?

15          A.           No.

16          Q.           Why didn't you?

17          A.           When I met Mr. Hall, the shooting was  
18 close to three hours old.

19          Q.           That would be outside the window where  
20 gunshot residue findings are valid?

21          A.           Yes, sir, and they lost track of Mr. Hall  
22 for a while.

23          Q.           Did the defendant ever ask you to give  
24 him a gunshot residue test?

25          A.           No, sir, not as I recall.

1 Q. Okay. Did the defendant, when you  
2 interviewed him, after you advised him of his rights  
3 contained in State's Exhibit 1, did the defendant ever ask  
4 for a lawyer?

5 A. No.

6 Q. Did the defendant ever indicate he didn't  
7 want to talk to you?

8 A. No, he was very cooperative talking to  
9 me.

10 Q. Did you use any threats of force against  
11 the defendant in order to get him to talk to you?

12 A. No, sir.

13 Q. Did you ever threaten the defendant that  
14 you're going to charge his wife and his son with murder  
15 and things likes that?

16 A. No, sir.

17 Q. Did you force him to go back up with you  
18 to look for the gun?

19 A. No, sir. He suggested he go back up.

20 Q. He suggested that he go back up and look  
21 for the gun?

22 A. I advised him anything he could do to  
23 help with the investigation would help. If we could  
24 recover the gun, that was a big item, so it doesn't fall  
25 into the hands of a juvenile or a child.

1 Q. That's when you suggested you go back up  
2 and look for the gun?

3 A. Yes.

4 Q. The gun was never recovered?

5 A. That's correct.

6 MR. ANDERSON: Thank you. I have no  
7 further questions.

8 THE COURT: Any cross-examination?

9 CROSS-EXAMINATION

10 BY MR. RADER:

11 Q. Good morning, Officer Huffman. Officer,  
12 isn't it almost a universal police practice for officers  
13 to mark items of evidence that they recover?

14 A. Yes, sir, that's correct.

15 Q. Can you tell why none of these three  
16 cartridge cases were marked where they were recovered?

17 A. A .380 casing is very small. I didn't  
18 want to ruin any latent prints off any of the striation  
19 marks.^

20 Q. Isn't it a fact that you didn't see these  
21 casings or didn't have them into your possession until  
22 after four o'clock in the morning?

23 A. That's correct.

24 Q. Officer Fromhold recovered these casings,  
25 didn't he?



1           A.           I recovered one from the front seat of  
2 the Honda Accord.

3           Q.           Can you tell who marked these casings --  
4 and you had the opportunity to look at them -- A, B, and  
5 C?

6           A.           No, sir, I cannot.

7           Q.           Have you seen the crime laboratory report  
8 as to these three casings?

9           A.           Yes, sir, I believe that I have.

10          Q.           And the prosecution, I think, has marked  
11 it as an exhibit. It indicates that these were submitted  
12 as Exhibit Q-1, and at the time that they were submitted  
13 they were marked A, B and C. Can you shed any light on  
14 that?

15          A.           No, sir.

16          Q.           Would you agree that that's -- it's an  
17 important item of evidence in this case that the odd  
18 shell, the one that didn't match, had come from the  
19 defendant's car, Mr. Hall's car?

20          A.           Two of the shells matched. Which two, I  
21 don't know. I don't understand what you're asking --  
22 your question.

23          Q.           Well, if the two casings laying on the  
24 street down on Republic, if that could be established  
25 through scientific evidence or could be established that

1 they came from the same gun, then wouldn't that be  
2 important?"

3 A. Yes, sir. It could also be one that was  
4 matched in the car and one on the street. I don't know  
5 which two matched.

6 Q. Dr. Parrott, the coroner, indicated to me  
7 a couple of weeks ago --

8 MR. ANDERSON: Objection.

9 THE COURT: Sustained.

10 Q. Is there a new gunshot residue test kit  
11 recently distributed throughout the Police Department?

12 A. I have no knowledge of that.

13 Q. Has that ever been a part of your  
14 training?

15 A. No, sir.

16 Q. What is your rank in the police  
17 department?

18 A. I am a police investigator for District  
19 1.

20 Q. Have you ever used a gunshot residue kit  
21 to try to preserve that kind of evidence?

22 A. No, sir.

23 Q. And how long have you been on the  
24 department?

25 A. Twenty-seven years. It will be 27 in

1 July.

2 Q. Was Mr. Hall handcuffed during his ride  
3 back up to Windsor?

4 A. He was placed in a marked police cruiser,  
5 I believe he was, yes, sir. As I recall, he was.

6 Q. Do you know if he was handcuffed behind  
7 him; his hands were handcuffed behind him?

8 A. I know he was kind of complaining about  
9 his arm. By procedure, he should have been handcuffed  
10 behind his back. As I recall he was, but it's been  
11 awhile.

12 MR. RADER: No further questions, your  
13 Honor. Thank you.

14 MR. ANDERSON: Nothing further.

15 THE COURT: All right. Officer Huffman.  
16 Thank you very much for your time. See you out in  
17 the hallway.

18 THE COURT: State have any further  
19 evidence?

20 MR. ANDERSON: No, your Honor.

21 THE COURT: State rest?

22 MR. ANDERSON: Yes

23 THE COURT: Anything else from the  
24 defense?

25 MR. RADER: No, your Honor.

1 THE COURT: Ladies and gentlemen, we'll  
2 now go directly into closing arguments. And Mr.  
3 Anderson, you put that podium wherever you want  
4 to.

5 MR. ANDERSON: Thank you.

6 THE COURT: Closing arguments of counsel  
7 are, as opening arguments, not evidence. You have  
8 now heard all of the testimonial evidence, though  
9 you have not seen the physical exhibits nor have  
10 you heard my instruction as to the law. So  
11 nothing counsel say in the next two hours is going  
12 to be evidence.

13 However, it is a perfectly permissible  
14 part of the trial, counsel will be able to  
15 summarize what they believe the evidence has shown  
16 and what they believe the conclusions are that you  
17 should come to. I have allotted each side one  
18 hour total for their closing arguments. It's a  
19 total of two hours. Mr. Anderson will speak first  
20 and last, and Mr. Rader will speak in between.

21 Mr. Anderson, go ahead.

22 MR. ANDERSON: Thank you, your Honor.

23 May it please the Court, counsel, ladies  
24 and gentlemen of the jury, on October 17, 1998,  
25 this defendant, Fredrick Hall, took out a loaded

1 .380 caliber handgun, and he shot Kevin Davis and  
2 Johann Hart on 14th and Republic Street at  
3 approximately 3:15 in the morning.

4 The evidence is clear in this case.  
5 Proof beyond a reasonable doubt -- listen to the  
6 definitions of proof beyond a reasonable doubt  
7 that Judge Martin gives to you. He will tell you  
8 that after having carefully considering and  
9 compared the evidence, you cannot say that you are  
10 firmly convinced of the truth of the charges.

11 If you look at the evidence in this case  
12 carefully, there are some things that are beyond  
13 dispute. The elements in this indictment are  
14 beyond dispute. There is no question that Kevin  
15 Davis -- somebody attempted to cause physical harm  
16 to Kevin Davis by means of a deadly weapon, a  
17 handgun. There is no doubt that somebody caused  
18 serious physical harm to Kevin Davis by shooting  
19 him through the shoulder.

20 There is no doubt that somebody attempted  
21 to cause serious physical harm to Johann Hart  
22 means of a deadly weapon. There is no doubt that  
23 somebody attempted to cause -- actually did cause  
24 -- serious physical harm to Johann Hart means of a  
25 deadly weapon. There is no question that somebody

1 shot a gun off at those two individuals with  
2 purpose to kill them, with purpose to murder them,  
3 shooting Johann Hart through the neck and in the  
4 shoulder, shooting him while he is lying on the  
5 street, shooting Kevin Davis in the arm.

6 This question is a question of identity.  
7 There is no question that Johann Hart and Kevin  
8 Davis were shot. There is no question they were  
9 shot with a gun. And there is no question that  
10 whoever shot them was trying to kill them.

11 Ladies and gentlemen, the evidence proves  
12 that this defendant, Fredrick Hall, is, in fact,  
13 the individual who did that. Take a look at the  
14 evidence. You have got photographs, State's  
15 Exhibits 2 through 6. These are photographs of  
16 the car that Fredrick Hall was driving on the  
17 night of the shooting.

18 We heard testimony from his wife  
19 yesterday that this is, in fact, her car. We  
20 heard testimony from his wife yesterday that he  
21 wasn't around when these shootings occurred. We  
22 heard testimony from his wife that he wasn't at  
23 the house, he had the car keys, and that he had  
24 been gone for a period of time before the shooting  
25 occurred.

1                   We heard testimony from Johann Hart and  
2                   Kevin Davis that, in fact, the driver of this car  
3                   was the assailant. We have heard testimony from  
4                   Officer Fromhold, when he arrived on the scene, he  
5                   got a license plate number that matches this car  
6                   that was driven by the assailant.

7                   He put out that license plate number, and  
8                   Officer Bailey, finding out where that license  
9                   plate number was registered to, figures this  
10                  person might be driving that way. He stakes it  
11                  out, and he sees this car driven by this  
12                  defendant. And when this defendant sees officer  
13                  Bailey, he takes off at a high rate of speed --  
14                  60, 70 miles an hour -- down Gilbert Avenue and  
15                  through Eden Park, running stop signs, running red  
16                  lights. Officer Bailey got a good look at him.  
17                  He pulled up beside him. The defendant turned and  
18                  looked at officer Bailey, and he took off.

19                  Officer Bailey loses the car momentarily.  
20                  Officer Neack responds to the area. They find the  
21                  car. And what do they find when they find the  
22                  car, this car -- the car that was used in the  
23                  shooting; the car that there is no dispute this  
24                  gunman drove -- they find him, this defendant,  
25                  Fredrick Hall, hiding in the bushes.

1                   And what does he tell the police then?  
2                   He tells Officer Neack I was just out buying  
3                   shaving cream. I am just out for a little stroll  
4                   in the night buying shaving cream. The defendant  
5                   admitted he told Officer Neack that he was out  
6                   buying shaving cream.

7                   When he takes the witness stand and tells  
8                   you yesterday, or day before, he told you that he  
9                   was going to drive that car. He was going to the  
10                  car with the car keys and move the car.

11                  This defendant was personally capable of  
12                  driving the car, much as he would have you believe  
13                  otherwise. He was perfectly capable of driving  
14                  the car that night, and he perfectly capable of  
15                  pulling the trigger of a gun and striking down two  
16                  young men.

17                  Take a look at that, because I know there  
18                  is going to be a lot of talk about these boards,  
19                  what they mean, what they say. And I will be the  
20                  first to admit, you have a shooting occurs at 3:15  
21                  in the morning. It's dark on an inner-city  
22                  street. Crack cocaine is around; we know that.  
23                  Kevin Davis had crack cocaine on him.

24                  We have witness statements from two  
25                  people that we attempted bring in, that the



1 defense attempted to bringing, and we couldn't  
2 locate. One of them was an allegedly a crack head  
3 -- or Jimmy Martin. He is the one that gave the  
4 police officer the license plate number off of  
5 this car.

6 The suspect is a male black, no further  
7 description. Suspect small brown, possible  
8 Toyota. It's on Defendant's Exhibit 8. You will  
9 hear that tape. I am sure defense counsel will  
10 play the tape for you about the calls coming in.  
11 The bottom line is in certain of these items they  
12 say, "Three people in the car; driver is a  
13 shooter; passenger is a shooter," things like  
14 that.

15 I don't know -- I don't know who put  
16 those reports out, and I don't know where they  
17 came from. I know they show up here. Think about  
18 this. Think about the testimony that Johann Hart  
19 gave you. He sees the defendant in a car. He  
20 approaches the car. He and the defendant are  
21 talking. They get into some type of an argument.  
22 Kevin Davis is  
23 across the street. He comes over. Johann Hart  
24 tells you this crack head, Jimmy, gets in the car.  
25 He says, "Hey, I will take you where there is some

1 crack cocaine." That's two people in the car  
2 right there, according to Johann Hart, according  
3 to whatever witnesses there were.

4 We have a witness down the street -- this  
5 female -- who says there were probably three  
6 people in the car. She sees the crack head get in  
7 the car, this defendant pulls out a .380, shoots  
8 Johann Hart in the neck, shoots him in the  
9 shoulder and Kevin Davis in the arm. The crack  
10 head jumps out of the car, according to Johann,  
11 and takes off.

12 You have got four people at the scene:  
13 Two are shot; one jumps in the car; one jumps out.  
14 Jimmy, the crack head -- I think he was referred  
15 to as John also -- the one in the car, gave them  
16 this the license. That's the person this witness  
17 down the street saw get out of the car.

18 We heard testimony from Officer Fromhold  
19 indicating one of the witness he interviewed  
20 talked about somebody getting out of the car and  
21 going through one of the person's pockets that is  
22 shot. That was the crack head. He gets out of  
23 the car. He comes around, and he tries to help  
24 Johann Hart, as he was shot in the neck. Look at  
25 these for what they are worth.

1 I know this: This car they are referring  
2 to is this car right there, the car driven by that  
3 defendant, identified by Johann Hart, Kevin Davis,  
4 and Dave Bailey. And we know from his wife's  
5 testimony, he wasn't at the house, he had gone for  
6 a while. She didn't know how long. She was  
7 laying in bed, and he had the car keys.

8 And we also know his son was at the house  
9 because, if you remember, when Police Officer  
10 Eatrides showed up at the house and started  
11 talking to the defendant's wife, she initially  
12 said her son wasn't there. But the police were at  
13 that location for approximately 40 minutes outside  
14 that house. Nobody could come in or get out of  
15 that house. The defendant certainly didn't come  
16 out of that house. And what did they tell you?  
17 What did Eatrides tell you? He told you, as he  
18 was at that location out in front of that house,  
19 he heard the radio broadcast concerning the chase,  
20 the chase Officer Bailey was engaged in of that  
21 car driven by that defendant, when Dexter Hall  
22 was, in fact, at home. If you look at  
23 one of these boards, it says "Cancel that call for  
24 Dexter Hall. He has been at home, and he's been  
25 there for a long time."

1           You also heard about the black jacket.  
2           Look at State's Exhibit Number 7. The defendant  
3           was wearing a black jacket that night.  
4           Admittedly, he was not clean shaven. One of the  
5           descriptions says "clean shaven." Who did that  
6           come from? Did that come from a witness who was  
7           150 feet down the street, saw a car going by, and  
8           heard shots going off?

9           This defendant, Fredrick Hall is, in fact  
10          the shooter in this case. Look at the testimony  
11          of Johann Hart and Kevin Davis. When Officer  
12          Huffman gets this defendant down at the district,  
13          he takes this photograph of him, and he puts them  
14          in the photo lineup. What did he do? He goes up  
15          to the hospital. He goes up to talk to Johann  
16          Hart.           Johann is in the hospital. He had  
17          been shot through the neck, been shot in the back,  
18          and he said, "Johann, can you give me a  
19          description of the guy that shot you?"

20          Johann says, "If I see a picture of that  
21          guy, I will tell you. I can point him out. I  
22          know who he is." He shows him this exhibit,  
23          State's Exhibit Number 7. What does Johann Hart  
24          do? He picks out Fredrick Hall, and he picks out  
25          this defendant, the defendant that Officer Bailey

1 saw driving this car.

2 The interesting thing about it is that  
3 when -- and I'll refer to State's Exhibit Number 8  
4 -- when Johann Hart made the identification of  
5 Fredrick Hall, this photograph, Mr. Hall's picture  
6 was actually right here. It was in the center.  
7 And if you look at State's Exhibit Number 8, this  
8 is a Polaroid photograph of the photo lineup as it  
9 existed when Officer Huffman showed it to Johann  
10 Hart for identification purposes.

11 Officer Huffman, being aware of the  
12 relationship between Johann Hart and Kevin Davis,  
13 decides he is going to mix things up a little bit.  
14 Instead of leaving the defendant's picture in the  
15 center, he is going to such switch it around.

16 What does he do? He goes and talks to  
17 Kevin Davis who has been released from the  
18 hospital. He said, "Kevin, can you give me a  
19 description of the guy?" He says, "If I see him,  
20 I will know who is." Again, he gives him State's  
21 Exhibit Number 9 in the current form, and State's  
22 Exhibit Number 9 is a photocopy of this Polaroid  
23 copy of it as he showed it to Kevin Davis.  
24 Kevin Davis says, "That's the guy," without  
25 hesitation.

1           Johann Hart and Kevin Davis didn't get a  
2           chance to talk: "Let's conspire. Let's identify  
3           this guy." Look at the identification in this  
4           case. We have got two witnesses independently  
5           identifying Fredrick Hall as the shooter at  
6           different times, at different places, without ever  
7           having talked to each other. We have got Officer  
8           Bailey, who sees him operating the motor vehicle.

9           Identification. This case is about  
10          identification. The evidence is clear beyond a  
11          reasonable doubt that this defendant, in fact, was  
12          the shooter that night. You heard what he said  
13          from the witness stand. I asked him, "Why don't  
14          you tell us what you told the police that night?"

15          Finally, he fessed up about telling him  
16          he was out looking for shaving scream. He said,  
17          "I don't remember what he told the police that  
18          night. All I remember is they threatened me.  
19          They did this. They did that. I don't remember  
20          what I told him."

21          Let's take a look what he did tell them.  
22          You heard from Officer Neack that when he  
23          Mirandized the defendant, the defendant was aware  
24          of his rights, and he made a knowing, intelligent,  
25          and voluntary waiver of those rights. He told him

1 he was out buying shaving cream. He stuck with  
2 that story for three hours.

3 Officer Neack transports him from Windsor  
4 Avenue down to the district to a wait for Officer  
5 Huffman to show, up the investigator on case.  
6 Again, they Mirandize him. This one is in  
7 writing, State's Exhibit 1. You will have a  
8 chance to look at this. You have heard talk about  
9 this. When Officer Neack and Huffman explained  
10 the defendant's Miranda Rights to him, he refused  
11 sign this waiver. He said, "I'm not going to sign  
12 it."

13 Listen to the instructions that Judge  
14 Martin gives to you, because he will tell you that  
15 his refusal to sign this waiver doesn't mean he  
16 can't intelligently waive his rights, which he  
17 did. You do not need a written rights waiver to  
18 take statements from somebody. That's the law.

19 He says, he asked for an attorney. We  
20 heard Officer Huffman say he didn't ask for an  
21 attorney. You heard him say he asked for a  
22 gunshot residue test. You heard Officer Huffman  
23 tell you, he never asked gunshot residue test.  
24 You heard him tell you the police threatened to  
25 arrest his son and charge him with murder and

1           arrest his wife and charge her with murder.

2                   Officer Huffman told you this that didn't  
3           happen. We haven't heard from Dexter. His wife  
4           didn't say -- on the witness stand yesterday, she  
5           didn't say that. He said everybody in it case is  
6           wrong except him. Johann is wrong in his  
7           identification. Kevin Davis is wrong in his  
8           identification. Officer Bailey is wrong in his  
9           identification. Officer Neack is wrong in reading  
10          him his rights. Huffman is wrong in reading him  
11          rights.

12                   I asked him, "What did you tell the  
13          police? Tell the ladies and gentlemen of the jur  
14          what you told the police that night.

15                   "I don't remember."

16                   I will tell you who does remember is  
17          Officer Huffman, because he wrote it down, and you  
18          heard what he said. He said we gave him his  
19          Miranda rights he agreed to talk to us. He didn't  
20          want to sign the waiver, and this is what he said:  
21          He said, "He picked up Dave and went to 14th and  
22          Republic Street.

23                   I always wondered about this until  
24          yesterday. I wondered about Dave. Who is Dave?  
25          We found out the answer yesterday when his wife



1 took the witness stand. She said, "I lent the car  
2 to Dave earlier in the day."

3 "Dave had the car. We were in Dayton."  
4 I don't know where the car was. My son, Dexter,  
5 got the keys back from Dave. Dexter gave the keys  
6 to my husband, and he was gone. He was out of the  
7 house at the time of the shooting. He had the car  
8 keys. He was gone.

9 What does he do? He figures, "Well, the  
10 shaving cream story hasn't worked so far. I will  
11 try something else. I will tell them I picked up  
12 Dave, and we went down to 14th and Republic."

13 He tells Police Officer Huffman that the  
14 two subjects who robbed and shot him two weeks ago  
15 were there, Johann Hart and Kevin Davis, that  
16 Dave, begins to shoot. He was on the passenger  
17 side next to the driver, and he shot these guys.  
18 Then he tells Officer Huffman that he drove off,  
19 dropped off Dave somewhere and told him to hide  
20 the gun. That's the second story. The first is  
21 the shaving- cream story; the second is Dave was  
22 in the car, Dave did the shooting, and I dropped  
23 off Dave and told him to hide the gun.

24 What does he say later? He says, "If the  
25 car is released, I will tell the police the

1 truth." This time it's stated that Dave was in  
2 the back seat behind him and-fired the shot. Then  
3 he stated he would take the police to where the  
4 weapon was, up on Windsor Avenue where he was  
5 arrested.

6 He voluntarily goes with the police; they  
7 are not forcing him, holding a gun to his head.  
8 He says, "I will try top take you where the gun  
9 is." They look for the gun. They are

10 unsuccessful. The gun is gone. He has either  
11 pitched it during a high-speed chase with Officer  
12 Bailey somewhere in Eden Park, or he, in fact, he  
13 planted it somewhere up around Windsor when he was  
14 hiding behind a tree. The gun has not been  
15 recovered.

16 Why couldn't he remember what he told  
17 Officer Huffman? Because it's not true. The  
18 truth is: He was out that night looking to score  
19 some crack cocaine or something; he sees these two  
20 individuals; he talks to Johann Hart; they get in  
21 some type of argument; he pulls out a gun and he  
22 fires. Why? I don't know.

23 Let's take a look at some of the other  
24 evidence in this case. I'm sure you will hear a  
25 lot about the shell casings. I will be honest: I

1 wish the shell casings hadn't been mixed up. Do  
2 you know what? In the final analysis of this  
3 case, it doesn't matter. This case is a case  
4 about identity. We have three shell casings  
5 recovered from the scene; one recovered from the  
6 car, all of them .380 caliber.

7 The police did what they should have  
8 done: Submit them for fingerprints, which they  
9 did. Referring to Defendant's Exhibit No. 15, the  
10 shell casings, that was an attempt to go take  
11 fingerprints from them, which was unsuccessful.  
12 Fingerprint are hit or miss. Sometimes we get  
13 them; sometimes we don't. On objects as small as  
14 shell casings, sometimes they don't. They shipped  
15 them up to the coroner's lab to have Bill Schrand  
16 actually make another examination.

17 Look at this report. This is another  
18 fingerprint taken off the car. They lifted one  
19 latent print off the car and compared it to the  
20 defendant's. That wasn't his. Does that mean  
21 anything? This one doesn't. It could be  
22 anybody's fingerprint. Let's take a look to the  
23 Bill Schrand's report. He indicates three  
24 discharged .380 caliber shell casings were  
25 submitted to him. That Q-1(W) and Q-1(C). They